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HAWAII LABOR
RELATIONS BOARD

STATE OF HAWAII

In the Matter of DIRECTOR,
DEPARTMENT OF LABOR AND
INDUSTRIAL RELATIONS,

) CASE NO. OSH 2008-12
) (Inspection No. 311428643)
)
) STIPULATION TO DISMISS; EXHIBIT A;
) APPROVAL AND ORDER

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Complainant Director of Labor and Industrial Relations ("Director") and Respondent AEKO KULA, INC. ("Respondent") seek dismissal of the above-captioned contested case presently pending before the Hawaii Labor Relations Board ("Board").

On or about April 7, 2008 through June 27, 2008, and as a result of an incident occurring on March 30, 2008, the Director, by and through the State of Hawaii's Occupational Safety and Health Division ("HIOSH"), conducted a complaint inspection at a workplace of the air cargo business of Aloha Airlines, Inc., located at One General Lyman Field, Hilo

International Airport, Hilo, Hawaii, 96720.

On March 20, 2008, Aloha Airlines, Inc., filed a Chapter 11 bankruptcy petition, and continued its cargo operations while attempting to reorganize. On April 28, 2008, Aloha Airlines, Inc., filed a notice to convert the Chapter 11 reorganization to Chapter 7 liquidation and a trustee was authorized to operate the air cargo operations. On May 12, 2008, the Bankruptcy Court approved a sale of Aloha Airlines, Inc.'s air cargo division assets from the U.S. Trustee to Respondent. The U.S. Trustee did not make any representations or warranties related to the assets, and Respondent assumed no Aloha Airlines, Inc. liabilities.

As a consequence of said inspection begun on April 7, 2008, the Director, through HIOSH's Administrator, issued a Citation and Notification of Penalty on August 28, 2008 ("Citation") to Respondent alleging violations of the Hawaii Occupational Safety and Health Standards and assessed an aggregate penalty of \$1,875.00, based on a successor liability theory. Citation 1, item 1 alleged that "the operator of a Yale forklift truck was not required to sound the vehicle's horn when driving forward with a load that obstructed his vision in the direction of travel toward the warehouse, thus resulting in injury to an employee who was overtaken by the truck and was caught in and dragged by the load." Citation 2, item 1 alleged that "a Yale forklift truck was not taken out of service when it was found to be defective and in need of repair, in that the reverse alarm was not operating. The potential result of continuing to operate a truck with a defective alarm is injury such as contusions or bruises from being struck by a reversing truck due to the lack of a warning signal." See Exhibit A.

Respondent timely contested the Citation. On March 30, 2008, Aloha Airlines, Inc., was running the air cargo operation and owned the forklift in question. On March 30, 2008, Respondent was not yet incorporated as a legal entity.

To avoid the expense of litigation and to dismiss the above-captioned case, the parties, by and through their respective representatives, stipulate and agree as follows:

1. The Board has jurisdiction over this contested case pursuant to section 396-11, Hawaii Revised Statutes ("HRS").

2. At all relevant times following May 14, 2008, the closing of the asset purchase from the U.S. Trustee, Respondent maintained a workplace at One General Lyman Field, Ste 3, Hilo International Airport, Hilo, Hawaii, 96720.

3 At all relevant times following May 14, 2008, the closing of the asset purchase from the U.S. Trustee, Respondent was an employer, as defined in HRS § 396-3, and employed employees, as defined in HRS § 396-3, and was therefore subject to the requirements of HRS chapter 396, the Hawaii Occupational Safety and Health Law.

4. The Citation of August 28, 2008 and the proposed penalty of \$1,875.00 are withdrawn by the Director.

6. Respondent will post a copy of this Dismissal and Order in a prominent place at or near the location of the posting of the Citation, and the Agreement and Order shall remain posted for three working days (excluding weekends and State holidays).

7. Respondent will continue to comply with HRS chapter 396, the Hawaii Occupational Safety and Health Law, and the related rules.

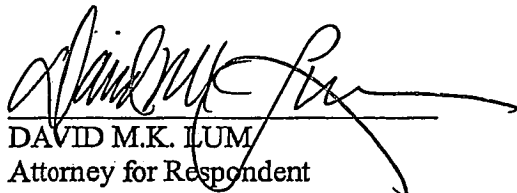
8. Nothing in this stipulation shall bar the Director from taking any action regarding future acts or practices by Respondent which may be alleged to violate HRS chapter 396, the Hawaii Occupational Safety and Health Law, or the related rules.

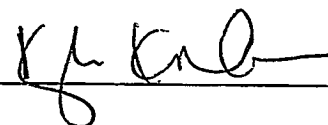
9. Upon approval of this Agreement, all proceedings before the Board shall be dismissed.

DATED: Honolulu, Hawaii, March 9, 2009.

APPROVED AS TO FORM:

AEKO KULA, INC.


DAVID M.K. LUM
Attorney for Respondent

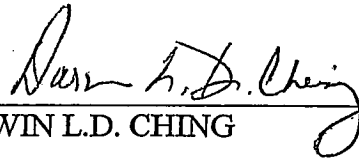
By: 
Its _____

APPROVED AS TO FORM:

DIRECTOR OF LABOR AND
INDUSTRIAL RELATIONS



HERBERT B.K. LAU
Deputy Attorney General
Attorney for Director of Labor and
Industrial Relations, State of Hawaii



DARWIN L.D. CHING

APPROVED AND SO ORDERED BY
HAWAII LABOR RELATIONS BOARD:

ORDER NO. 312
DATED: March 9, 2009


JAMES B. NICHOLSON, Chair
EMORY J. SPRINGER, Member
SARAH R. HIRAKAMI, Member

State of Hawaii
Department of Labor and Industrial Relations
Hawaii Occupational Safety and Health Division
830 PUNCHBOWL STREET, ROOM 425
Honolulu, HI 96813
Phone: (808) 586-9110 FAX: (808) 586-9104



Certified Number: 7006 2150 0004 4051 2515

Citation and Notification of Penalty

To:
Aeko Kula Inc
and its successors
P O Box 30900
Honolulu, HI 96820

Inspection Number: 311428643 (George Smith)
Inspection Date(s): 04/07/2008 - 06/27/2008
Issuance Date: 08/28/2008
OSHC ID: E1353
Optional Report No.: 02208
Inspection Type: Complaint
Scope of Inspection: Comprehensive Inspection

Inspection Site:

One General-Lyman Field Ste 3
Hilo International Airport
Hilo, HI 96720

The violation(s) described in this Citation and Notification of Penalty is (are) alleged to have occurred on or about the day(s) the inspection was made unless otherwise indicated within the description given below.

This Citation and Notification of Penalty describes violations of the Hawaii Occupational Safety and Health Law. The penalty(ies) listed herein is (are) based on these violations. You must abate the violations referred to in this Citation by the dates listed and pay the penalties, unless within 20 calendar days from your receipt of this Citation and Notification of Penalty, you mail a notice of contest to the State of Hawaii Occupational Safety and Health Division (HIOSH) at the address shown above. Please refer to the enclosed booklet (Employer Rights and Responsibilities Following a HIOSH Inspection) which outlines your rights and responsibilities and which should be read in conjunction with this form. Issuance of this Citation does not constitute a finding that a violation of the Law has occurred unless there is a failure to contest as provided for in the Law or, if contested, unless this Citation is affirmed by the Hawaii Labor Relations Board (HLRB) or a court.

Posting - The law requires that a copy of this Citation and Notification of Penalty be posted immediately in a prominent place at or near the location of the violation(s) cited herein, or, if it is not practicable because of the nature of the employer's operations, where it will be readily observable by all affected employees. This Citation must remain posted until the violation(s) cited herein has (have) been abated, or for 3 working days (excluding weekends and State holidays), whichever is longer. The penalty dollar amounts need not be posted and may be marked out or covered up prior to posting.

Informal Conference - An informal conference is not required. However, if you wish to have such a conference you may request one with the Administrator during the 20 calendar day contest period. During such an informal conference, you may present any evidence or views which you believe would support an adjustment to the citation(s) and/or penalty(ies).

If you are considering a request for an informal conference to discuss any issues related to this Citation and Notification of Penalty, you must take care to schedule it early enough to allow time to contest after the informal conference, should you decide to do so. Please keep in mind that a written letter of intent to contest must be submitted to the Administrator within 20 calendar days of your receipt of this Citation. The running of this contest period is not interrupted by an informal conference.

If you decide to request an informal conference, please complete, remove and post the page 4, Notice to Employees next to this Citation and Notification of Penalty as soon as the time, date, and place of the informal conference have been determined. Be sure to bring to the conference any and all supporting documentation of existing conditions as well as any abatement steps taken thus far. If conditions warrant, we can enter into an informal settlement agreement which amicably resolves this matter without litigation or contest.

Employers' Right to Contest - You have the right to contest this Citation and Notification of Penalty. You may contest all citation items or only individual items. You may also contest penalties and/or abatement dates without contesting the underlying violations. Unless you inform the Administrator in writing that you intend to contest the citation(s) and/or penalty(ies) within 20 calendar days after receipt, the citation(s) and the penalty(ies) will become a final order of the Department of Labor and Industrial Relations and may not be reviewed by any court or agency. Once a letter of contest is received, it becomes the jurisdiction of the HLRB.

Penalty Payment - Penalties are due within 20 calendar days of receipt of this notification unless contested. Make your check or money order payable to "Director of Budget and Finance." Please indicate the Inspection Number on the remittance.

HIOSH does not agree to any restrictions or conditions or endorsements put on any check or money order for less than the full amount due, and will cash the check or money order as if these restrictions, conditions, or endorsements do not exist.

Notification of Corrective Action - For each violation which you do not contest, you are required by Section 12-51-22 to submit an Abatement Certification to HIOSH. The certification must be sent by you within 5 calendar days of the abatement date indicated on the citation. For **Willful and Repeat** violations, documents (example: photos, copies of receipts, training records, etc.) demonstrating that abatement is complete must accompany the certification. Where the citation is classified as **Serious** and the citation states that abatement documentation is required, documents such as those described above are required to be submitted along with the abatement certificate. If the citation indicates that the violation was corrected during the inspection, no abatement certification is required for that item.

All abatement verification documents must contain the following information: 1) Your name and address; 2) the inspection number (found on the front page); 3) the citation and citation item number(s) to which the submission relates; 4) a statement that the information is accurate; 5) the signature of the employer or employer's authorized representative; 6) the date the hazard was corrected; 7) a brief statement of how the hazard was corrected; and 8) a statement that affected employees and their representatives have been informed of the abatement.

The law also requires a copy of all abatement verification documents, required by Section 12-55-22 to be sent to HIOSH, also be posted at the location where the violation appeared and the corrective action took place.

Employer Discrimination Unlawful - The law prohibits discrimination by an employer against an employee for filing a complaint or for exercising any rights under this Act. An employee who believes that he/she has been discriminated against may file a complaint no later than 60 days after the discrimination occurred with the Hawaii Occupational Safety and Health Division at the address shown above.

Employer Rights and Responsibilities - The enclosed booklet (Employer Rights and Responsibilities Following a HIOSH Inspection) outlines additional employer rights and responsibilities and should be read in conjunction with this notification.

Employees' Right to Contest - The law gives an employee or his/her representative the opportunity to object to any abatement date set for a violation if he/she believes the date to be unreasonable. The contest must be mailed to the Hawaii Occupational Safety and Health Division at the address shown above and postmarked within 20 calendar days of the receipt by the employer of this Citation and Notification of Penalty.

Inspection Activity Data - you should be aware that OSHA publishes information on its inspection and citation activity on the Internet under the provisions of the Electronic Freedom of Information Act. The information related to your inspection will be available 30 calendar days after the Citation Issuance Date. You are encouraged to review the information concerning your establishment at WWW.OSHA.GOV. If you have any dispute with the accuracy of the information displayed, please contact this office.

State of Hawaii
Department of Labor and Industrial Relations
HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION



NOTICE TO EMPLOYEES OF INFORMAL CONFERENCE

An informal conference has been scheduled with HIOSH to discuss the citation(s) issued on 08/28/2008. The conference will be held at the HIOSH office located at 830 PUNCHBOWL STREET, ROOM 425, Honolulu, HI 96813 on _____ at _____. Employees and/or representatives of employees have a right to attend an informal conference.

STATE OF HAWAII
Department of Labor and Industrial Relations
Hawaii Occupational Safety and Health Division

Inspection Number: 311428643
Inspection Dates: 04/07/2008 - 06/27/2008



830 Punchbowl Street, Room 425
Honolulu, HI 96813

Issuance Date: 08/28/2008

Citation and Notification of Penalty

Company Name: Aeiko Kula Inc
Inspection Site: One General Lyman Field Ste 3, Hilo International Airport, Hilo, HI 96720

Citation 1 Item 1 Type of Violation: **Serious**

29 CFR 1910.178(n)(4) [Refer to chapter 12-73.1, HAR] was violated because:

The operator of a Yale forklift truck was not required to sound the vehicle's horn when driving forward with a load that obstructed his vision in the direction of travel toward the warehouse, thus resulting in injury to an employee who was overtaken by the truck and was caught in and dragged by the load.

29 CFR 1910.178(n)(4) states "The driver shall be required to slow down and sound the horn at cross aisles and other locations where vision is obstructed. If the load being carried obstructs forward view, the driver shall be required to travel with the load trailing."

Location: Cargo ramp, Aloha cargo station, Hilo International Airport

Date By Which Violation Must be Abated: 09/02/2008
Penalty: \$1,875.00

See pages 1 through 3 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

STATE OF HAWAII
Department of Labor and Industrial Relations
Hawaii Occupational Safety and Health Division

Inspection Number: 311428643
Inspection Dates: 04/07/2008 - 06/27/2008



830 Punchbowl Street, Room 425
Honolulu, HI 96813

Issuance Date: 08/28/2008

Citation and Notification of Penalty

Company Name: Aeko Kula Inc
Inspection Site: One General Lyman Field Ste 3, Hilo International Airport, Hilo, HI 96720

Citation 2 Item 1 Type of Violation: **Other**

29 CFR 1910.178(p)(1) [Refer to chapter 12-73.1, HAR] was violated because:

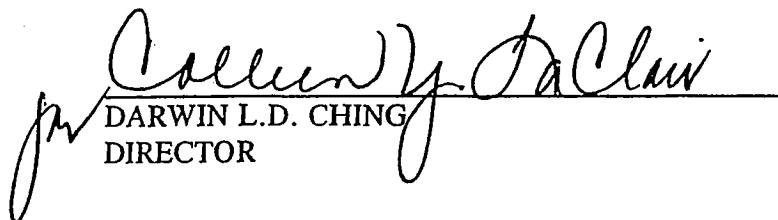
A Yale forklift truck was not taken out of service when it was found to be defective and in need of repair, in that the reverse alarm was not operating. The potential result of continuing to operate a truck with a defective alarm is injury such as contusions or bruises from being struck by a reversing truck due to the lack of a warning signal.

29 CFR 1910.178(p)(1) states "If at any time a powered industrial truck is found to be in need of repair, defective, or in any way unsafe, the truck shall be taken out of service until it has been restored to safe operating condition."

Location: Aloha cargo station, Hilo International Airport

Date By Which Violation Must be Abated:

09/02/2008


DARWIN L.D. CHING
DIRECTOR

See pages 1 through 3 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.